

## **603 KAR 10:010. Static advertising devices.**

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.990(2), 23 U.S.C. 131, 23 C.F.R. Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise static advertising devices.

Section 1. General Conditions Relating to Off-Premise Static Advertising Devices. (1) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to 603 KAR 10:021.

(2) A static advertising device within 660 feet of the right-of-way shall be prohibited unless the device:

(a) Is not visible from the main travelled way of an interstate, parkway, national highway system, or federal-aid primary highway; or

(b) Complies with applicable zoning ordinances and regulations of a county or city.

(3) A static advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(4) The erection or existence of a static advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Includes or is illuminated by flashing, intermittent, or moving lights;

(i) Uses lighting, unless the lighting is:

1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of the interstate, parkway, national highway system, or federal-aid primary highway;

2. Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; or

3. Of a luminance less than 300 nits;

(j) Is erected or maintained upon a tree;

(k) Is painted or drawn on rocks or another natural feature;

(l) Is erected upon or overhanging the right-of-way; or

(m) Is mobile, temporary, or vehicular.

(5)(a) A static advertising device shall not exceed the maximum size established in KRS

177.863(3)(a) and may contain up to two (2) advertisements per facing pursuant to KRS 177.863(3)(b).

(b) A static advertising device that has more than two (2) faces shall not have an interior angle between two (2) facings larger than forty-five (45) degrees.

(c) A static advertising device may contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size of the facing of the device established in KRS 177.863(3)(a).

(6) An on-premise advertising device shall not affect spacing requirements for an off-premise static advertising device.

(7) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(8) A static advertising device that utilizes lighting to illuminate the advertising device shall use white lights.

(9) The name of the owner of a static advertising device shall:

- (a) Be legible from the main traveled way;
- (b) Not be larger than twenty (20) square feet;
- (c) Be shown without other owner information; and
- (d) Not be considered an advertisement.

(10) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured horizontally and at a right angle to the centerline of the interstate, parkway, national highway system, or federal-aid primary highway for a distance of 660 feet.

Section 2. Off-Premise Static Advertising Devices on Interstates and Parkways. (1) If it is visible from the main traveled way of an interstate or parkway and meets the permitting criteria established in this administrative regulation, a static advertising device located in a protected area of an interstate or parkway shall be permitted by the department.

(2) A permit shall not be issued unless a static advertising device:

(a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances and regulations; and

(b)1. Is erected or maintained in a protected area of an interstate or parkway that is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or

2. Was zoned commercial or industrial and included a commercial or industrial land use on September 21, 1959.

(3) A static advertising device shall not be closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

(4) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 500 feet of another off-premise static advertising device on the same side of the interstate or parkway.

(5) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 500 feet of an off-premise electronic advertising device visible in the same direction of travel.

Section 3. Off-Premise Static Advertising Devices on National Highway System and Federal-Aid Primary Highways. (1) A static advertising device visible from the main traveled way of a national highway system or federal-aid primary highway shall be permitted by the department if the device:

(a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances; and

(b) Is erected and maintained in a protected area of a national highway system or federal-

aid primary highway in:

1. A commercial or industrial zone; or
2. An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

(2)(a) A non-billboard off-premise static advertising device shall be prohibited on or over a state-owned right-of-way.

(b) A non-billboard off-premise static advertising device shall not affect the spacing requirements for off-premise static advertising devices on national highway system and federal-aid primary highways.

(c) A non-billboard off-premise static advertising device with multiple messages shall be limited to an overall facing size of no more than 150 square feet, and each individual message shall be limited to eight (8) square feet.

(d) Non-billboard off premise static advertising devices shall be separated by at least 200 feet.

(e) A permit shall not be required for a non-billboard advertising device.

Section 4. Nonconforming Static Advertising Devices. (1) A nonconforming static advertising device in a protected area shall not require a permit and shall continue to exist if the device is:

- (a) Not abandoned or discontinued;
- (b) Subjected to only routine maintenance;
- (c) In compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at the erection; and
- (d) Substantially the same as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming advertising device shall be submitted electronically to the department pursuant to the following table:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

\*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming static advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(6)(a) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed.

(b) A transfer of ownership for a nonconforming advertising device shall be submitted on a

completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming advertising device. Routine maintenance shall include:

- (a) In kind replacement of material components with a like material component;
- (b) Painting of supports and frames;
- (c) Changing an advertising message;
- (d) The change of existing nonstructural external light fixtures for energy efficiency;
- (e) Replacement of nuts, bolts, or nails;
- (f) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and
- (g) Rebuilding a destroyed advertising device.

(8) The following shall not be considered routine maintenance and shall be prohibited:

- (a) Enlargement of the device;
- (b) A change in the structural support including material diameters, dimensions, or type such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;
- (c) The addition of lights, either attached or unattached, to help illuminate the nonconforming static advertising device structure that previously had no lighting for illumination;
- (d) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process;
- (e) The addition of bracing, guy wires, or other reinforcement;
- (f) A change in the location of the structure; or
- (g) A change in the direction of the face.

(9) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation, and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 5. On-premise Static Advertising Devices. (1) An on-premise static advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise static advertising device shall be erected on the property where the business is located and:

- (a) Inside the activity boundary line; or
- (b) No further than 400 feet from the activity boundary line.

(3) An on-premise static advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit shall be considered within the activity boundary line.

(4) An on-premise static advertising device that complies with this administrative regulation shall only be erected:

- (a) 1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or
- 2. Outside of an urban area and beyond 660 feet of the right-of way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances as established in KRS 177.860(4).

(5) If further than fifty (50) feet outside the activity boundary line, an on-premise static advertising device shall not exceed:

- (a) Twenty (20) feet in length, width, or height; and
- (b) 150 square feet in area, including border and trim and excluding supports.

(6) More than one (1) on-premise static advertising device or one (1) on-premise electronic advertising device shall not be located at a distance greater than fifty (50) feet outside the activity boundary line.

(7) If taking measurements for the placement of an on-premise static advertising device for an industrial park, the service road shall be considered within the activity boundary line for the industrial park.

(8) An on-premise static advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the business being advertised.

(9) If taking measurements for the placement of an on-premise static advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:

- (a) Identify a business or businesses conducted at the location; or
- (b) Include a display area used to advertise on-premise activities.

(11) An on-premise advertising device shall not:

- (a) Be of such intensity as to cause glare or impair the vision of a driver;
- (b) Move or have moving or animated parts;
- (c) Be erected or maintained on a tree;
- (d) Be painted or drawn on rocks or another natural feature; or
- (e) Be erected upon or overhanging the right-of-way.

(12) An on-premise advertising device shall not affect the spacing requirements of an off-premise device as established in KRS 177.863(2)(d).

(13) Extensions of a facing up to fifteen (15) percent shall be allowed:

- (a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the device as established in KRS 177.863(3)(a); or
- (b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of an advertising device as established in subsection (5) of this section.

(14) An on-premise advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 6. Scenic Highways and Byways. (1) After the designation of a scenic highway by the Transportation Cabinet, additional off-premise static advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for static advertising devices located on scenic byways as those located on scenic highways.

(3) Only routine maintenance shall be performed on an off-premise static advertising device legally in existence on the date of the scenic highway designation.

Section 7. Permits, Renewals, and Transfers. (1) The requirements of this section shall apply to an off-premise static advertising device on an interstate, parkway, national highway system, or federal-aid primary highway.

(2) With the exception of a nonconforming static advertising device, a permit shall be required from the department for a static advertising device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be good until the next renewal period.

(4) An application for a static advertising device permit shall be made on a completed Application for Off-Premise Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals. A renewal shall be made on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.

(7)(a) If submitting a biennial renewal, the permittee shall certify that the off-premise static advertising device meets the permit requirements of this administrative regulation.

(b) If the static advertising device no longer meets the permit requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for a static advertising device shall be submitted electronically to the department pursuant to the following schedule:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

\*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit an update within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming static advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(10) A static advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a static advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved static advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) The addition of lights, either attached or unattached, to help illuminate the static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit;

(e) The addition of bracing, guy wires, or other reinforcement;

- (f) A change in the location of the structure; or
- (g) A change in the direction of the face.
- (12) The permit for an off-premise static advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 8. Notice of Violations; Appeals. (1) The department shall notify the owner of the static advertising device by certified letter that the static advertising device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 9 of this administrative regulation.

Section 9. Penalties. (1) A static advertising device owner who violates a provision of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Off-Premise Advertising Device", TC Form 99-31, May 2013;
- (b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013; and
- (c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>. (20 Ky.R. 236; eff. 10-5-1993; Am. 22 Ky.R. 1367; 1635; 1851; eff. 4-5-1996; 24 Ky.R. 157; 612; 875; 1076; eff. 10-7-1997; Recodified from 603 KAR 3:080, 1-15-2014; 41 Ky.R. 2325; 42 Ky.R. 353; 156; eff. 11-5-2015.)